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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of *November 22, 1971*

BETWEEN

U. S. RAILWAY MFG. CO.

AND

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

* * * * *

AGREEMENT AND ASSIGNMENT

Dated as of *November 22, 1971*

BETWEEN

U. S. RAILWAY MFG. CO.

AND

COMMERCIAL NATIONAL BANK OF PEORIA
Peoria, Illinois

AGREEMENT

THIS AGREEMENT, dated as of ~~November~~ 24, 1971 by and between U. S. RAILWAY MFG. CO., a corporation organized under the laws of the State of Illinois (hereinafter called the "Builder"), and TOLEDO, PEORIA & WESTERN RAILROAD COMPANY, a corporation organized under the laws of the State of Delaware, with an office in the City of East Peoria, State of Illinois (hereinafter called the "Railroad").

RECITALS

Builder desires to construct, sell, and deliver to the Railroad certain railroad equipment hereinafter defined provided that contemporaneously with and as a part of said sale, it does sell, transfer and assign all of its right, title and interest under this Agreement to an assignee under an Agreement and Assignment being executed contemporaneously herewith. Railroad desires to purchase the equipment upon the terms and conditions provided herein and upon the understanding and agreement that upon the contemporaneous conclusion of this sale and the assignment of its rights hereunder, Builder will receive in cash the full purchase price of the equipment. The Railroad equipment which is the subject matter of this Agreement and is hereinafter sometimes referred to as "Equipment" or "car" or "cars" is as follows:

Fifty (50) 100 Ton PS-2CD welded triple covered hopper cars of 4,740 cubic feet capacity bearing the Railroad numbers 18,091 to 18,140 inclusive built in accordance with the specifications referred to in Bidder's bidding specifications #63558 dated October 1, 1971. Bidding specifications referred to are incorporated in this Agreement by reference.

AGREEMENT

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto DO HEREBY AGREE as follows:

1. CONSTRUCTION AND SALE. The Builder will construct, sell and deliver the Cars to the Railroad and the Railroad will purchase from the Builder and accept delivery and pay for the Cars as hereinafter provided. The Builder reserves the right to make changes in design or add improvements on any of the

Equipment at any time without thereby incurring any obligation to install same on Equipment previously accepted by Railroad.

2. DELIVERY. The Builder will deliver the cars to the Railroad on its tracks at Bushnell, Illinois, freight charges, if any, prepaid, provided that payment therefor has been received by Builder from the Railroad and the Builder's Assignee all as provided in this Agreement and the Agreement and Assignment executed by and between Builder and its Assignee contemporaneously herewith.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities or delays in receiving necessary materials.

During construction, the cars shall be subject to inspection and approval by inspectors and other authorized representatives of the Railroad and the Builder shall grant to such authorized inspectors or representatives reasonable access to its plant. From time to time, upon completion of each car or of a number of cars by the Builder, such car or cars shall be presented to an inspector or other authorized representative of the Railroad for inspection at the Builder's plant in Indianapolis, Indiana, and if each car conforms to the Specifications, such inspector or representative shall execute and deliver to the Builder, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such car or cars have been inspected and accepted by him on behalf of the Railroad, have been completed in accordance with the Specifications and are marked in accordance with Article 6 hereof.

Notwithstanding Railroad has issued certificates of inspection and acceptance as to any group, or Builder has received payment for such group from Railroad or Builder's assignee, Builder agrees the risk of damage or loss to such group during transportation to the Railroad from the place of inspection and acceptance to Bushnell, Illinois, shall be borne by Builder. On delivery of each car at the point specified hereinabove, the Railroad will assume with respect thereto all responsibility for damage to and risk of loss for such car.

3. PURCHASE PRICE AND PAYMENT. The base price of the cars shall be Seventeen Thousand Two Hundred Fifty Dollars (\$17,250.00) each, being a total base price for all of the cars of Eight Hundred Sixty-two Thousand Five Hundred Dollars (\$862,500.00). The base price, exclusive of freight charges, if any, from the Builder's plant to the point of delivery, shall

be subject to increase or decrease as may be agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the invoice price for the cars covered thereby which shall be the base price including any agreed increase or decrease. Payment for the cars shall be made in not more than three (3) settlements unless Builder and Railroad shall otherwise agree. Each settlement shall be for a group of cars delivered to and accepted by the Railroad, each such group of cars being hereinafter called a "Group".

The Railroad hereby acknowledges itself to be indebted to the Builder in the amount of, and hereby promises to pay to the Builder on each Closing Date at such place as the Builder may designate, the aforesaid Purchase Price of the cars as follows:

(a) With respect to each invoice for a Group, an amount in cash by which the invoice amount of such Group exceeds the product obtained by multiplying the number of cars in the Group billed by Seventeen Thousand Two Hundred Fifty Dollars (\$17,250.00), plus

(b) For each and every car in a Group, Seventeen Thousand Two Hundred Fifty Dollars (\$17,250.00) payable in forty (40) consecutive quarterly installments, each of which installment shall be in the principal amount of Four Hundred Thirty-one Dollars Twenty-five Cents (\$431.25) together with interest on the balance of the purchase price of such car remaining unpaid. Interest shall be computed for each successive quarter at the time of payment of the quarterly payment of principal and shall be one-half of one percent ($1/2\%$) above the prime rate as quoted by the Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, the rate for the first quarter being six and one-half percent ($6-1/2\%$) per annum from the Closing Date for such car. The first installment of the portion of the Purchase Price of each Group of cars payable pursuant to this paragraph 3 (b) shall be payable on the first day of the third calendar month immediately following the last Closing Date and subsequent installments to be payable on the first day of every third month thereafter.

The Railroad may prepay at any time any sum of the principal in the following amounts and on the following conditions:

The Railroad may prepay upon the due date of any installment of the Purchase Price hereunder any sum of the principal in an amount of Four Hundred Thirty-one Dollars and Twenty-five Cents (\$431.25) or any multiple thereof, together with interest accumulated to the date of payment on such sum so prepaid. All such principal sums so prepaid shall be applied toward the payment of installments in inverse order of maturity.

The term "Closing Date" with respect to any Group shall mean such date (not later than December 31, 1971) occurring not more than ten (10) business days following presentation by the Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for car or cars invoiced, as shall be fixed by written notice from the Railroad to the Builder and its Assignee at least five (5) business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this agreement shall be determined on basis of a 360 day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding, interest at the rate of two percent (2%) per annum in excess of the rate in effect at the time said amounts remaining unpaid shall have become due and payable.

All payments provided for in this agreement will be made by the Railroad in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

4. TAXES. All payments to be made by the Railroad hereunder will be free of expense to the Builder for collection or other charges and will be free of expense to the Builder with respect to the amount of any local, state or federal taxes (other than income, gross receipts other than such as are in the nature of or in lieu of sales taxes, excess profits and similar taxes imposed upon the receipt by Builder of any of said payments) or licenses hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the purchase price of the equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Builder solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Builder or result in a lien upon any unit of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not,

in the opinion of the Builder, adversely affect the property or rights of the Builder hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Builder directly and paid by the Builder, the Railroad shall reimburse the Builder on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Builder for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Builder shall have been legally liable with respect thereto, or unless the Railroad shall have approved the payment thereof.

5. TITLE TO THE EQUIPMENT. The Builder shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Builder shall have been paid the full indebtedness in respect of the Purchase Price of all the Equipment together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Builder except that the Builder, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 23 hereof, and will execute and deliver at the same place, for recording or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Builder pursuant to Article 7 hereof and not applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

6. MARKING OF EQUIPMENT. The railroad will cause each unit of the Equipment delivered to it to be kept numbered with its identifying number and will keep and maintain, plainly, distinctly, permanently and conspicuously lettered on each side of each of the Cars a stencil painted in a contrasting color setting forth the name of the Builder and/or of the Builder's assignee, as the case may be, in letters not less than one inch in height followed by the word "Owner" or other appropriate words designated by the Builder, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Builder to the Equipment and its rights under this Agreement. The Railroad will not place any unit of the Equipment in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Railroad will not change the numbers of any such units except with the consent of the Builder and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Builder by the Railroad and filed and recorded by the Railroad in all public places where this Agreement shall have been filed and recorded.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the name or initials of the Railroad or with the name or initials of a subsidiary or affiliated railroad company controlling or controlled by the Railroad or may letter it in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

7. INSURANCE. The Railroad will at all times and at its own expense keep the cars insured (with loss payable as their interest may appear to the Railroad and the Builder which latter term for all purposes of this Paragraph 7 shall be deemed to mean and include the Builder's Assignee) in a company or companies approved by the Builder against loss, damage or destruction thereof due to fire, lightning, wreck, derailment collision, flood, tornado, cyclone, sabotage, riot or civil commotion in sums and by policies in an amount not less than the unpaid balance of the purchase price owing on the Cars; provided that the policies for such insurance may provide insurance subject to a customary deductible. Each policy in respect of such insurance shall provide for ten days' prior written notice to the Builder of the cancellation of any of such insurance, and shall provide further that, as to the interest of the Builder, such

insurance shall not be altered or impaired by any act or omission of anyone other than the Builder. Any moneys paid under any insurance policy shall be applied to the then unpaid balance applicable to the Car with respect to which the moneys are so paid or shall be applied toward the replacement or repair of such Cars. In the event that the moneys are to be applied to such replacement or repair they shall be retained by the Builder until replacement or repair of the Car or Cars lost, destroyed or damaged, but upon proof satisfactory to the Builder of such replacement or repair and if the Railroad is not then in default in any of the obligations hereunder the Builder shall pay over such money to the Railroad. Any moneys receivable by or payable to the Railroad from any railroad or other person or corporation because of loss or destruction of or damage to any such Car or Cars shall be paid over to the Builder to be held and applied by it as aforesaid.

In the event the Railroad shall fail to keep the Cars insured as above provided, the Builder, without impairment of any of its rights and remedies by reason of such default, may, but shall not be required to, obtain appropriate insurance and pay the premium or premiums therefor and in such event the Railroad shall and will reimburse the Builder for the amount of the premium so paid with interest at the rate of two percent (2%) per annum in excess of the rate in effect at the time the Builder pays said premium.

8. MAINTENANCE AND REPAIR. The Railroad will at all times maintain the equipment in good order and repair at its own expense.

9. BUILDER'S WARRANTIES. The Builder warrants that the equipment will be built in accordance with the requirements, specifications and standards set forth in Article 1 hereof and warrants the equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder), and workmanship under normal use and service; the Builder's obligation under this Article 9 being limited to making good at its factory any part or parts of any unit of the equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 1, 2, 3, and 15 hereof, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the

Equipment, except as aforesaid. The Builder reserves the right to make changes in design or add improvements on equipment at any time without incurring any obligation to install same on equipment previously purchased.

10. COMPLIANCE WITH LAWS AND RULES. During the term of this Agreement the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment, and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Builder, adversely affect the property or rights of the Builder hereunder.

11. REPORTS AND INSPECTIONS. When requested by the Builder and not oftener than once each year, commencing with the year 1971 the Railroad will furnish to the Builder in such number of counterparts or copies as may reasonably be requested an accurate statement signed by an authorized officer (a) showing such information regarding the condition and state of repair of the Equipment as the Builder may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the preceding calendar year (or, in the case of the first such statement, since the date hereof), the markings required by Article 6 hereof have been preserved or replaced. The Builder shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year during the term of this Agreement.

12. POSSESSION AND USE. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company, controlled by, or under common control with, the Railroad, or over which the Railroad has trackage rights, and the Equipment may be used also upon connecting and other carriers in the usual interchange or movement of traffic, from and after delivery of the Equipment by the Builder hereunder, but only upon and subject to all the terms and conditions of this Agreement.

13. PROHIBITION AGAINST LIENS. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Builder thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Builder, adversely affect the property or rights of the Builder in or to the Equipment or otherwise hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

14. RAILROAD'S INDEMNITIES. The Railroad agrees to indemnify, protect and hold harmless the Builder from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Builder of title to the Equipment or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment; provided, however, that the Builder shall not be relieved from its warranty covering material and workmanship hereinbefore in Article 9 set forth.

15. PATENT INDEMNITIES. Except in cases of articles and materials specified by the Railroad and not manufactured by the Builder and in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of

any design, article or material infringing or claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any article or material specified by the Railroad and not manufactured by the Builder or of any design specified by the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Railroad, or its assigns, all and every such further assurance as may reasonably be requested by the Railroad, or its assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder, and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this agreement in any manner.

16. ASSIGNMENTS. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Builder. An assignment or transfer to a railroad company which shall acquire all or substantially all the lines of railroad of the Railroad and which, by execution of an appropriate instrument satisfactory to the Builder, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Builder under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Builder and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained in Articles 9 and 15 hereof, or relieve the Railroad of its obligations to the Builder under Articles 2, 4, 14 and 15 hereof and this Article 16, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Builder's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, and in and to all rights granted hereunder to Builder in relation thereto, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign agreements of this character and understands that Builder's obligations hereunder are expressly conditioned upon the execution of an Agreement and Assignment with the Commercial National Bank of Peoria, Peoria, Illinois, and the performance thereunder by the Assignee and the performance hereunder by the Railroad so that the Builder receives the entire Purchase Price in cash for each Group of Cars for which settlement is made. The Railroad expressly represents and agrees, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Builder hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Builder as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, con-

struction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, nowsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment, or successive assignments by the Builder, of title to the Equipment and of the Builder's rights hereunder with respect thereto, the Railroad will, whenever requested by the Builder or such assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to bear such words or legend as shall be specified by such assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad. The cost of such markings with respect to the first assigned of this Agreement (or to a successor agent in case the first assignee is an agent) and any assignee or assignees of such first assignee shall be borne by the Railroad. The cost of such markings in connection with any other assignment will be borne by such other assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Group, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for the assignee.

If this Agreement shall have been assigned by the Builder, and the Assignee shall not make payment to the Builder with respect to any Group of Cars on the Closing Date therefor as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and if such payment shall not have been previously paid by the Assignee, such Group shall be excluded from this Agreement and the Railroad will, not later than 60 days after the date such payment was due, purchase such Group for cash at the Purchase Price thereof, together with interest from the date such payment was due to the date of payment by the Railroad at the prime rate of interest of the Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, in effect on the date such payment was due.

17. DEFAULTS. In the event that any one or more of the following events of default shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as herein provided within ten days after payment thereof shall be due hereunder; or

(b) The Railroad shall, for more than 30 days after the Builder shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Builder for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall within 30 days from the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions, and, unless such proceeding shall within 30 days after the filing or effective date thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings in such

manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Builder may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Builder, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of two percent (2%) per annum in excess of the rate in effect at the time of such declaration, to the extent legally enforceable, and the Builder shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Builder may at its election waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any right or remedies consequent thereon.

18. REMEDIES. If the Railroad shall make default as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 17 hereof), and during the continuance of such default, the Builder may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law

then in force and applicable to the action to be taken by the Builder, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the Railroad's premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Builder shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Builder, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Builder and shall there deliver the Equipment or cause it to be delivered to the Builder; and, at the option of the Builder the Builder may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Builder shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Builder reasonably convenient to the Railroad. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Builder shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Builder and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If the Railroad shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided, (unless such declaration has been rescinded and annulled as provided in Article 17 hereof) the Builder (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election retain the Equipment as its own and make such disposition thereof as the Builder shall deem fit (including, if the Builder so elects,

the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate and all payments made by the Railroad may be retained by the Builder as compensation for the use of the Equipment by the Railroad; provided, however, that, if the Railroad, within 20 days of receipt of notice of the Builder's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Builder the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; or the Builder, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Builder may determine; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Builder in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Builder under the provisions of this Agreement. Written notice of the Builder's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Article 23 hereof, at any time during a period of 30 days after the entire indebtedness in respect of Purchase Price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Builder shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Builder may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Builder may determine, provided that the Railroad shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 23 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Builder may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the

extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Builder shall be entitled to have credited on account thereof all sums due to the Builder from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Builder shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Builder. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Builder in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Builder under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Builder upon demand, and, if the Railroad shall fail to pay such deficiency, the Builder may bring suit therefor and shall be entitled to recover judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Builder, there shall remain a surplus in the possession of the Builder, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Builder in enforcing its remedies under the terms of this Agreement. In the event that the Builder shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Builder may recover reasonable expenses including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interests hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Builder hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

19. APPLICABLE STATE LAWS. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Builder's rights hereunder and any and all rights of redemption.

20. EXTENSION NOT A WAIVER. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Builder shall impair or affect the Builder's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Builder's rights or the obligations of the Railroad hereunder. The Builder's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Railroad or the Builder's rights hereunder with respect to any subsequent payments or default therein.

21. RECORDING. The Railroad will cause this Agreement and any assignments hereof or of any interest herein, and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Builder for the purpose of proper protection, to the satisfaction of counsel for the Builder, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Builder certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Builder.

22. PAYMENT OF EXPENSES. The Railroad will pay all reasonable costs, charges, and expenses, except the counsel fees of the Builder, but including the fees and expenses of counsel for the first assignee of this Agreement and of counsel for any other parties acquiring interests in the first assignment by the Builder of this Agreement and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of such first assignment, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any certificate of the payment in full of the indebtedness in respect of the Purchase Price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs, charges and expenses, including fees and expenses of counsel and including stamp and other taxes, if any, of the first assignee of this Agreement (including the fees and expenses of any agent, if the first assignee is an agent, and of any successor agent or agents) and of any party or parties acquiring interests in such first assignment incurred in connection with such first assignment and payments to the Builder by such first assignee, and in connection with the transfer by any party or parties of interests acquired by such first assignment.

23. NOTICE. Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) To the Railroad, at 2000 East Washington Street, East Peoria, Illinois 61611;

(b) To the Builder, at 2200 East Devon Avenue, Des Plaines, Illinois 60018;

(c) To any assignee of the Builder or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Builder, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Railroad represents and warrants that its chief place of business is in Illinois.

24. ARTICLE HEADINGS. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

25. EFFECT AND MODIFICATION OF AGREEMENT. This Agreement exclusively and completely states the rights of the Builder and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Builder and the Railroad.

26. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recordation or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

27. DEFINITIONS. The term "Builder", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, U. S. Railway Mfg. Co., and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment.

28. EXECUTION. This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of *November 22, 1971* the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

Attest:

Jud S. Juhumeto
Assistant Secretary

Attest:

[Signature]
Secretary

U. S. RAILWAY MFG. CO.

By

[Signature]
TOLEDO, PEORIA & WESTERN RAILROAD
COMPANY

By

[Signature]
President

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

On this 22 day of November, 1971, before me personally appeared John C. Felten, to me personally known, who, being by me duly sworn, says that he is President of U. S. RAILWAY MFG. CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

Barbara Ellen Zander
Notary Public

My Commission Expires My Commission Expires June 11, 1975

STATE OF ILLINOIS)
COUNTY OF PEORIA) ss.

On this 28 day of November, 1971, before me personally appeared C. L. PATTISON, to me personally known, who, being by me duly sworn, says that he is President of Toledo, Peoria & Western Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

Barbara Ellen Zander
Notary Public

My Commission Expires July 75

AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT, Dated as of ~~November~~ 22, 1971 between U. S. RAILWAY MFG. CO., an Illinois corporation organized under the laws of the State of Illinois (hereinafter called the "Builder") and COMMERCIAL NATIONAL BANK OF PEORIA, Peoria, Illinois, a National Banking Association, duly organized and existing under the laws of the United States of America, with chief place of business at Peoria, Illinois (hereinafter called the "Bank").

WHEREAS, the Builder and Toledo, Peoria & Western Railroad Company, a Delaware corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of ~~November~~ 22, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in the Conditional Sale Agreement (hereinafter called the Equipment):

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Assignee to the Builder of the amounts required to be paid under Section 6 hereof with respect to such unit; and

(b) All of the Builder's right, title, interest, and remedies in and to or under the Conditional Sale Agreement (except the right to construct and deliver the Equipment, such right, interest and remedy as are intended to survive the assignment, and the right to receive the payments specified in subparagraph (a) of the second paragraph of Article 3 thereof and in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Builder as provided in Article 4 thereof), and in and to any and all amounts

which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded;

without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligation of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained in Articles 9 and 15 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 2, 4, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion (but only after the filing of the Conditional Sale Agreement and this Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act) to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the

Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The Builder covenants and agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Builder. The Builder further covenants and agrees with, and warrants to, the Assignee and the Railroad that at the time of delivery of each unit of the Equipment to the Railroad under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to sell such unit, free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and that the obligation of the Railroad to pay the Purchase Price of such unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, set-off or counterclaim whatsoever; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

The Builder agrees that in any suit or proceeding brought by the Assignee to collect any installment of the indebtedness in respect of the Purchase Price of the Equipment, or interest thereon or any other payment due under the Conditional Sale Agreement, or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off or counterclaim whatsoever of the Railroad arising out of the breach by the Builder of any

obligation with respect to the Equipment or the construction, delivery or warranty thereof, or under Articles 9 and 15 of the Conditional Sale Agreement. The Assignee will give notice to the Builder of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, set-off or counterclaim asserted by the Railroad therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, set-off or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Builder thereof and the Builder will thereafter be given the right by the Assignee, at the Builder's expense, to settle or defend such defense, set-off or counterclaim.

Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, and articles and materials specified by the Railroad and not manufactured by the Builder, the Builder agrees to indemnify, protect, and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use of any design, article or material infringing or claimed to infringe on any patent or other right in or about the construction or operation of the Equipment, or any unit thereof.

The Builder agrees that any amount payable to it by the Railroad, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim, lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Builder the amount to be paid under Section 6 hereof.

4. The Builder will cause the Equipment, to be plainly, distinctly, permanently and conspicuously lettered on each side of each unit of said Car at the time of delivery of each of the Cars to the Railroad, a stencil painted in a contrasting color containing in letters not less than one inch in height, the following legend:

COMMERCIAL NATIONAL BANK OF PEORIA, OWNER

5. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

6. The Bank, on the Closing Date, for each Group of cars, as such terms are defined in the Conditional Sale Agreement, will pay to the Builder \$17,250.00 per car representing as stated in the Conditional Sale Agreement the basic price of each, upon the receipt by the Bank of the following documents, in form and substance satisfactory to it:

(a) A Bill of Sale from the Builder to the Bank, transferring to the Bank title to all Cars so delivered and warranting said title to be free, as of the time of delivery to the Railroad, of all liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement;

(b) A Certificate of Acceptance signed by an authorized representative of the Railroad stating that the cars covered by such Certificate have been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the Requirements and provisions of the Conditional Sale Agreement, and further stating that there was plainly, distinctly, permanently and conspicuously lettered on each side of each unit of the Cars at the time of its acceptance, a stencil painted in a contrasting color containing, in letters not less than one inch in height, the following legend:

COMMERCIAL NATIONAL BANK OF PEORIA, OWNER -

(c) A duplicate of the Builder's invoice covering each Car so accepted.

(d) An Opinion of Counsel for the Builder stating (i) that the Builder is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) that the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument, binding upon the Builder and enforceable against the Builder in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights, (iii) that this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights,

and (iv) that title to the Cars is validly vested in the Assignee, free of all claims, liens and encumbrances, except only the rights of the Railroad under the Conditional Sale Agreement.

(c) An Opinion of Counsel for the Railroad stating (i) that the Railroad is a duly organized and existing corporation in good standing under the laws of the State of Delaware, (ii) that the Railroad has the corporate power and authority to enter into the Conditional Sale Agreement and to consent to the Agreement and Assignment thereof and that all corporate action necessary in connection therewith has been duly taken, (iii) that the Conditional Sale Agreement and the Consent to the Agreement and Assignment have been duly executed and delivered by the Railroad, (iv) that the Conditional Sale Agreement and Consent to the Agreement and Assignment are valid, binding and enforceable in accordance with their respective terms, and (v) that no consent or approval of any governmental authority or regulatory body is required to render the Conditional Sale Agreement or the Consent to the Agreement and Assignment valid and enforceable.

7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that (assuming valid authorization, execution and delivery by the Railroad) it is a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect

to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, the terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

10. This Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated as of *November 22 1971*, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, U. S. RAILWAY MFG. CO., an Illinois corporation, and the Assignee, each pursuant to due corporate authority, have caused this instrument to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

(Corporate Seal)

ATTEST:

Ind S. Jukunda
Assistant Secretary

ATTEST:

Ch. Dacring
Asst. V. Pres.

U. S. RAILWAY MFG. CO.

By *John E. Webb*

COMMERCIAL NATIONAL BANK OF PEORIA

By *John E. Webb*
Vice President

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

On this 22nd day of November, 1971, before me personally appeared John C. Felton, to me personally known, who, being by me duly sworn, says that he is President of U. S. RAILWAY MFG. CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

Ellen Zander
Notary Public

My Commission Expires My Commission Expires June 11, 1975

STATE OF ILLINOIS)
COUNTY OF PEORIA) ss.

On this 22nd day of November, 1971, before me personally appeared John E. Heidman, to me personally known, who, being by me duly sworn, says that he is Vice President of COMMERCIAL NATIONAL BANK OF PEORIA, that one of the seals affixed to the foregoing instrument is the seal of said National Banking Association, that said instrument was signed and sealed on behalf of said National Banking Association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said National Banking Association.

(Notarial Seal)

Felta Joachim
Notary Public

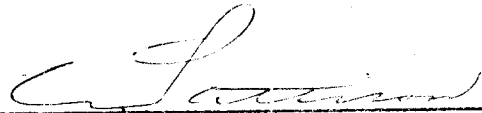
My Commission Expires June 9, 1973

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Toledo, Peoria & Western Railroad Company hereby acknowledges due notice of, and consents to, the assignment made by the foregoing Agreement and Assignment as of

TOLEDO, PEORIA & WESTERN
RAILROAD COMPANY

By



President